

REMARKS

The Official Action of July 29, 2003 has been carefully considered and reconsideration of the application as amended is respectfully requested.

Claims 109-113 have been added more completely to define the subject matter which Applicants regard as their invention. The recitations in claim 109 correspond with the recitations in claim 108, now cancelled. The recitations in claims 110-113 draw support from the specification as filed at, for example, page 4, last full paragraph; page 7, third full paragraph, and the Examples beginning on page 8 of the specification and including Table 1 on page 15.

The claims stand rejected under 35 USC 103(a) as allegedly being unpatentable over Commick and Nitto Electric Inc Co. in view of Meinke et al. Applicants respectfully traverse these rejections.

In making the rejection, the Examiner has, respectfully, improperly ignored a limitation of the claims, namely that the claimed components are selected and are present in the claimed bead so as to provide the bead with the recited atmospheric release characteristics. The Examiner contends that this recitation is, alternatively, either (a) an intended use of the claimed product or (b) inherently present in the cited art.

With respect to (a), Applicants have previously explained that the recitation is **not** a recitation of intended use (see Amendment dated March 3, 2003 at paragraph bridging pages 5 and 6). Rather, the recitation functionally limits the claimed components to those that are capable of achieving the recited release characteristics (see MPEP Section 2173.05(g) and *In re Barr*, 170 USPQ 33 (CCPA 1971) (recognizing the limiting effect on a chemical compound of the recitation "incapable of forming a dye with said oxidizing developing agent"). In the Official Action, the Examiner has not commented on this argument, but has simply repeated the conclusory assertion that the recitation is one of intended use. Applicant respectfully requests consideration of their argumentation and, if the Examiner maintains the position, an explanation of **why** the recitation is considered to be merely one of intended use.

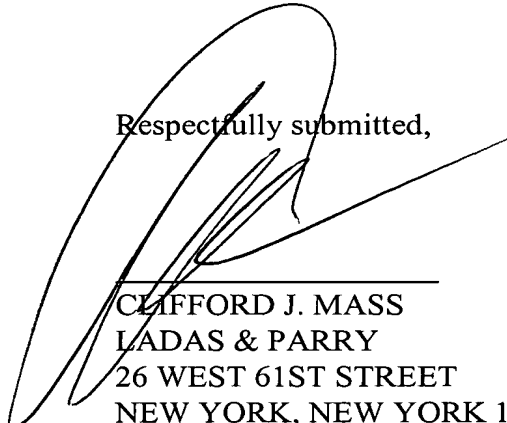
With respect to (b), Applicants submit herewith a Declaration Under 37 CFR 1.132 which shows that the selection of the specific components of the claimed bead affect the release characteristics of the bead. This may also be seen with reference to the primary reference, Connick, which discloses that the beads described therein have release characteristics which are opposite to those of the claimed beads; i.e., whereas the claimed beads are storable in water, the Connick beads are released in water (see Connick at column 2, lines 5-11). This being the case, it cannot be said that the prior art beads inherently (i.e., necessarily) have the recited properties.

Since the cited art does not show or suggest beads having the claimed release

properties, it is respectfully submitted that the cited art cannot set forth even a *prima facie* case of obviousness for the invention as claimed. Even assuming for the sake of argument that the art did set forth a case of *prima facie* obviousness, it is respectfully submitted that the evidence in the Declaration submitted herewith of unexpectedly advantageous results would be sufficient to overcome such *prima facie* case with respect to the claims reciting gelatin. In this respect, the Declaration shows that gelatin can significantly inhibit the release of an active compound in the claimed beads as compared with other surfactants. These results could not have been expected from the cited art, which do not even recognize that the nature of the components, including the surfactant, is a result effective variable. Accordingly, the Declaration shows the nonobviousness of the claimed beads comprising gelatin.

In view of the above, it is respectfully submitted that all rejections and objections of record have been overcome and that the application is now in allowable form. An early notice of allowance is earnestly solicited and is believed to be fully warranted.

Respectfully submitted,



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